IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 337 OF 2005

Chandrakant Dada Darekar,
Age: 54 years, Occ.: Circle
Officer, Kashele, Tal. Karjat,
Dist. Raigad, residing at
Palasdhari, Taluka: Karjet,
District: Raigad. ... Applicant.

Versus.

The State of Maharashtra. ... Respondent.

Shri S.R.Chitnis, Senior Counsel with Smt.V.R.Raje for
the Applicant.
Ms.M.H.Mhatre, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 26th October, 2005.

ORAL JUDGMENT.:

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Applicant is an accused who is being prosecuted for commission of offence under section 7, 12, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. The Applicant is the Accused No.2. The Applicant made an application at Exh.7 praying for discharge. The Applicant is the original Accused No.2. By the order dated 21st September 2005, the learned Special Judge (PC Act), Raigad at Alibag rejected the application. Being aggrieved by the said order, the present Revision Application has been filed.

3. The learned Senior Counsel appearing for the Applicant has taken me through the complaint filed by one Prabhakar Gunaji Asawale and other material on the record of the trial Court. He submitted that considering the prosecution story, a clear case has been made out for discharge. He submitted that even while framing the charge, it is the accused No.1 who has been implicated for offence under section 7 of the said Act of 1988. In the charge, the allegation regarding demand and acceptance of pecuniary benefit is made only against the Accused No.1. He submitted that the application for discharge has been rejected by the learned Special Judge without considering the material on record. The learned A.P.P. supported the impugned order by pointing out that there is sufficient material available to proceed against the Applicant and the material is more than sufficient for proceeding against the Applicant. The learned A.P.P. submitted that no interference is called for in the revisional jurisdiction.

4. I have considered the submissions. The reasons for rejecting the impugned order are recorded by the learned Judge only in one paragraphs i.e. paragraph 5 which reads thus:

> "5. Perusal of the papers of investigation, quite clearly shows involvement of accused

Chandrakant in the commission of offences and that the charge Ex.3 reveals that certain slight modifications and alteration need to be made therein, so as to give a clear idea to accused as to what case he is to defend and what the prosecution really alleges against him. On perusal of the papers of investigation, there is absolutely no grounds to say that this is a case wherein the accused deserves to be discharged.

Hence the order."

5. In paragraph No.10 of the decision of the Apex Court reported in (1979) 3 SCC page 4 (Union of India v/s. Prafulla Kumar Samal & another), the Apex court held thus:

"10. Thus on consideration of the authorities mentioned above, the following principles emerge:

1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2) Where the materials placed before the Court

disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons

of the matter and weigh the evidence as if
he was conducting a trial."

6. Though a very elaborate consideration of the material is not required at this stage, still the Court has to consider whether the material on record is sufficient for proceeding against the accused. It may not be necessary to consider whether the material on record is sufficient for conviction. However, some kind of evaluation of material on record is necessary. Moreover, the trial Court is required to record reasons in brief for either discharge of the accused or for rejection of the application for discharge. The learned Judge has considered the case for discharge only in one sentence by observing that on perusal of the papers of investigation, there are absolutely no grounds to say that the accused deserves to be discharged.

7. On a plain reading of the impugned order, it is obvious that there is a non-application of mind by the learned Judge. It is the right of the accused person that the Court considers the plea of discharge on merits. Therefore, in my view, a case is made out for setting aside the impugned order and for directing the learned trial Judge to decide the application for discharge afresh in the light of the observations made above.

8. Hence the following order is passed:

(i) The impugned order dated 21st September 2005 is quashed and set aside and the Application at Exh.7 made by the Applicant is restored to file.

(ii) The learned Special Judge will decide the Application at Exh.7 afresh in the light of the observations made by this Court in the Judgment.

(iii) All contentions of the parties are expressly kept open.

(iv) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.